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PART III.

Legislative Measures and Rules thereunder.

REGULATION No. IV OF 1912.

(RECEIVED THE ASSENT OF HIS HIGHNESS THE MAHARAJA ON THE
7TH DAY OF MARCH 1912.)

A Regulation further to amend the Indian Contract Act as in force in Mysore.

Whereas it is expedient further to amend the Indian Contract Act as in force
in Mysore; His Highness the Maharaja is pleased to enact as follows:—

Short title, extent, commence-
ment, and application.

1. (1) This Regulation may be called "The Indian
Contract Act Amendment Regulation, 1912."

(2) It shall extend to the whole of Mysore.

(3) It shall come into force on the 1st day of April 1912.

(4) It shall apply to every contract in respect of which any suit is instituted
or which is put in issue in any suit instituted after the commencement of this
Regulation.

Substitution of a new section
for Section 16 of the Indian Con-
tract Act, 1872.

2. Section 16 of the Indian Contract Act, 1872,
shall be repealed and the following substituted there-
for, namely:—

"16 (1) A contract is said to be induced by "undue influence" where the
relations subsisting between the parties are such that
one of the parties is in a position to dominate the
will of the other and uses that position to obtain an unfair advantage over the
other.

(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another—

(a) Where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or

(b) Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

(3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

Nothing in this sub-section shall affect the provisions of Section 111 of the Indian Evidence Act, 1872, as applied to Mysore.

Illustrations.

(a) A having advanced money to his son B, during his minority, upon B's coming of age obtains by misuse of parental influence, a bond from B for a greater amount than the sum due in respect of the advance. A employs undue influence.

(b) A, a man enfeebled by disease or age, is induced, by B's influence over him as his medical attendant, to agree to pay B an unreasonable sum for his professional services. B employs undue influence.

(c) A being in debt to B, the money-lender of his village, contracts a fresh loan on terms which appear to be unconscionable. It lies on B to prove that the contract was not induced by undue influence.

(d) A applies to a banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan on these terms. This is a transaction in the ordinary course of business, and the contract is not induced by undue influence."

Amendment of Section 19 and addition of a new section after that section.

3. In Section 19 of the said Act, the words "undue influence" shall be repealed and after the same section, the following new section shall be inserted, namely:—

Power to set aside contract induced by undue influence.

19 A. When consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused.

Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the Court may seem just.

Illustrations.

(a) A's son has forged B's name to a promissory note. B, under threat of prosecuting A's son, obtains a bond from A for the amount of the forged note. If B sues on this bond, the Court may set the bond aside.

(b) A, a money-lender, advances Rs. 100 to B, an agriculturist and, by undue influence, induces B to execute a bond for Rs. 200 with interest at 6 per cent per month. The Court may set the bond aside, ordering B to repay the Rs. 100 with such interest as may seem just.

Amendment of sub-section (1) of Section 25 of the Indian Contract Act, 1872.

4. The word "documents" shall be substituted for the word "assurances" occurring in sub-section (1) of Section 25 of the said Act.

Amendment of para 1 of Section 43 of the Indian Contract Act, 1872.

5. The words "one or more" shall be substituted for the word "one" in para 1 of Section 43 of the said Act.

Amendment of illustration (e) to Section 63 of the Indian Contract Act, 1872.

6. The word "composition" shall be substituted for the word "compensation" occurring in the illustration (e) to Section 63 of the said Act.

Amendment of Section 74 of
Indian Contract Act, 1872.

7. (1) Paragraph 1 of Section 74 of the said Act shall be repealed and the following substituted therefor, namely :—

“74. When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.

Compensation for breach of contract where penalty stipulated for.

Explanation.—A stipulation for increased interest from the date of default may be a stipulation by way of penalty.”

(2) The following illustrations shall be added after illustration (c) to the said section, namely :—

“(d) A gives B a bond for the repayment of Rs. 1,000 with interest at 12 per cent at the end of six months, with a stipulation that, in case of default, interest shall be payable at the rate of 75 per cent from the date of default. This is a stipulation by way of penalty and B is only entitled to recover from A such compensation as the Court considers reasonable.

(e) A, who owes money to B, a money-lender, undertakes to repay him by delivering to him ten maunds of grain on a certain date and stipulates that, in the event of his not delivering the stipulated amount by the stipulated date, he shall be liable to deliver twenty maunds. This is a stipulation by way of penalty and B is only entitled to reasonable compensation in case of breach.

(f) A undertakes to repay B a loan of Rs. 1,000 by five equal monthly instalments with a stipulation that, in default of payment of any instalment, the whole shall become due. This stipulation is not by way of penalty, and the contract may be enforced according to its terms.

(g) A borrows Rs. 100 from B and gives him a bond for Rs. 200 payable by five yearly instalments of Rs. 40, with a stipulation that, in default of payment of any instalment, the whole shall become due. This is a stipulation by way of penalty.”

T. ANANDA ROW,
Dewan.